



02 JUL 2009

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In re Application of
KNIGHT (deceased) et al.
Serial No.: 10/585,829
PCT No.: PCT/AU04/01733
Int. Filing Date: 10 December 2004
Priority Date: 13 January 2004
Atty. Docket No.: MOR3-PT023
For: BRIDGING BEAM

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: DECISION ON
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: DECLARATION
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: UNDER 37 CFR 1.42
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This is in response to applicant's Declaration which was filed in the United States Patent and Trademark Office on 27 April 2009. Applicant's request for a one month extension of time is granted.

BACKGROUND

On 13 June 2008, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 12 November 2008, applicant filed a declaration executed by two of three inventors named in the international application along with the \$65 surcharge for filing the declaration after the thirty month period and a request for an extension of time. The declaration was allegedly executed by the apparent heir to a deceased inventor.

On 27 January 2009, a decision was mailed indicating that the declaration was unacceptable under 37 CFR 1.497 (a) and (b).

On 27 April 2009, an incomplete declaration was filed.

DISCUSSION

37 CFR § 1.42 requires that in the case of the death of the inventor, the legal representative of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent.

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a legal representative and indicate the citizenship, residency and mailing address of the legal representative. The declaration must also state the citizenship, residency and last mailing address of the deceased inventor to comply with 37 CFR 1.497(a)(3).

The executed declaration submitted on 12 November 2008, identified the inventors as John Keith Knight, Robert Edwin Randell and Carmel Geraldine Chell. Counsel of record stated that the declaration was executed by Mr. Knight's widow. However, that declaration did not identify her as the legal representative or the heir of the deceased inventor and was unacceptable with regard to the deceased inventor and his legal representative/heir(s).

Petitioner now presents an incomplete declaration (supplemental page only) for deceased inventor which does not meet the requirements of 37 CFR 1.497(b). Although the declaration identifies Beverly Anne Knight as the legal representative, it does not identify John Keith Knight as the deceased inventor.

The declaration is also defective because it does not identify the specification to which it is directed. Moreover, the declaration does not meet the requirements of 37 CFR 1.497(a)(3) because it does not identify each inventor and the country of citizenship of each inventor, including the deceased inventor. It is merely a one page of a declaration, to meet the requirements for compliance with 37 CFR 1.497(a) and (b).

The requirements of 37 CFR 1.497 (a) and (b) have not been met and the declaration is unacceptable as filed. Accordingly, it is inappropriate, at this time, to accord the application status under 37 CFR 1.42. The declaration is unacceptable under 37 CFR 1.497 (a) and (b).

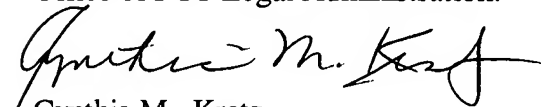
CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 and 37 CFR 1.497(d) is **DISMISSED WITHOUT PREJUDICE**.

What is required is a newly executed declaration, in accord with the requirements of 37 CFR 1.497(a) and (b).

Applicant must respond within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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